IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 124 of 1987

MOTI LAL & ORS.
V/S
SMT. GAYATRI DEVI

Mr. RK SINGHAL, for the appellant / petitioner

Mr. MR MEHTA for Mr. RAJENDRA MEHTA, for the respondent

Date of Order : 6.9.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

This second appeal has been filed by the defendants against the judgment and decree of the learned lower Appellate Court Civil Judge, Sri Ganganagar dt. 7.8.87, passed in Civil Appeal No. 33/74, reversing the judgment and decree of the learned trial court, the Munsiff, Suratgarh dt. 21.9.1974, and thereby decreeing the plaintiff's suit for perpetual injunction, mandatory as well as prohibitory, and issuing prohibitory injunction, prohibiting the defendants from erecting any wall towards the plaintiff's side of the half portion of the main gate, so as to obstruct passage of the plaintiff, and also issued mandatory injunction for removal of construction, that may have been made on this portion.

The facts of the case are, that the plaintiff respondent filed a suit for perpetual injunction, alleging interalia, that the defendant had the property, having

permanent four wall on all the four sides, and having main gate measuring 23 x10 ft., and on either side of this gate there were three rooms, and the rooms adjacent to the gate were having an opening on this gate, and this gate was being used for entrance and exit from the property. It was then alleged, that on 22.2.1957, southern portion of this property, including three Kothris and half main gate, were sold to the plaintiff by registered sale deed, and it was mentioned therein, that the property described in yellow colour, in the annexed site plan, which included half portion of the main gate, and three Kothris, is being sold, and possession has been given, and thus the plaintiff claims to be the owner of the half portion of the property described by word “ASTD” in the site plan annexed with the plaint. It was then alleged, that the seller has died, and the defendants are his legal representatives. According to the plaintiff, the plaintiff's husband has retired, and since the plaintiff's son is Medical Officer in Suratgarh, which place is surcharged with political considerations, and therefore, the defendants have entertained dishonest intention, and want to raise construction over the land marked by red colour, and started erecting a wall, to which it was objected, but to no good. Interalia with these averments it was prayed, that the decree for perpetual injunction be issued to demolish wall “XY”, and to restrain the defendants from interfering with the user of the half of the main gate by the plaintiff, peacefully.

After raising certain objections the defendants filed written statement, disputing the width of the main gate, and contending it to be 10ft. X 10 inch, and not 10 ft. as alleged. Then, it was pleaded that the site plan said to be annexed with the plaint is a subsequent creation, and forged, rather from perusal of the sale deed, it is clear, that the seller had sold southern portion to the extent of 2500 sq. yards, and the description of the construction, as given in the sale deed, was an accidental error, on account of measurements having not been taken on the site, that does not adversely affect the rights of the defendant, and thereby the plaintiff does not get right in the half portion of the gate, as half portion of the gate has not been sold, rather only three rooms (कोठड़ी) situated towards south of the gate, did comprise of the property sold. It was also pleaded, that if half portion of the gate is included, then that does not tally with the measurements given in the end of the sale deed, and thus it creates an inconsistent situation. It was also pleaded, that the recital about delivery of possession was only formal (तकमिलन), rather in view of the close relations between the seller and purchaser, the seller continued to remain in possession till his death, and had been letting out the plaintiff's portion of the premises, and had been realising rent also. It was then pleaded, that since the seller was letting out the quarters, the tenants were using the gate with the permission of the seller, and that the suit has been undervalued. Then, in additional pleas it was pleaded,

that as value of the property has increased, taking advantage of erroneous stipulation in the sale deed, about the construction, the plaintiff has entertained dishonesty, and to grab the land, the suit has been filed. With this it was pleaded, that the suit be dismissed.

The learned trial court framed as many as six issues, out of which issue no. 2, 3 and 4 relating to valuation of the suit, sufficiency of court fees, and jurisdiction of the Court, were decided as preliminary issues, while issue no. 1, 1A and 6, being crucial issues, were decided by the impugned judgment.

The learned trial court deciding issue no. 1 and 1A together, being, as to whether the sale deed conveyed 2500 sq. yards of land including ½ portion of the main gate, placing burden on the plaintiff, and issue no. 1A being as to whether the recital about conveying half portion of the gate was an accidental error, placing burden on the defendant, held, that the land to the extent of half portion of the gate was not sold, and only 2500 sq. yards of land was sold, and that, the recital about conveying half portion of the land was erroneous. Then, deciding issue no. 6, being as to whether the plaintiff, and her tenants, had been using the main gate since 22.2.57, as owner, which was never obstructed by the seller and his heirs, and as to what is its effect on the plaint, it was held, that in view of the close relations between the

seller and the husband of the plaintiff, even if the gate was used, it does not confer any right, unless it was brought to the notice of the seller, that the gate is being used as a right.

In appeal the learned lower Appellate Court found the two issues no. 1 and 1A in favour of the plaintiff, and therefore, set aside the decree of the learned trial court.

The appeal was admitted vide order dt. 14.5.1993, framing the following substantial question of law:-

> "Whether the lower appellate court has rightly construed the document Ex.1, which is a document of title of the plaintiff, in arriving at its finding about the extent of the title vested in the plaintiff in the disputed property?"

Assailing the impugned judgment and decree, it was contended, that in the sale deed Ex.-1, the property conveyed has been clearly described as 2500 sq. yards, measuring 50 sq. yards on each side, and simply because of accidental error half portion of the gate was also mentioned to be included in the property, it cannot mean, that the plaintiff had been sold land beyond 2500 sq. yards, and since the 2500 sq. yards ends at the point where three rooms end, the plaintiff does not get any right in half portion of the door, and thus the learned lower Appellate Court was in error in concluding, that in the sale deed 2500 sq. yards conveyed was to include half

portion of the gate. Some judgments were cited on the principles propounded, about interpretation of the document, in cases where there are inconsistencies in different paragraphs of the document, so also where there is inconsistency between measurements and boundaries of the property conveyed by the document, for the purpose of interpreting the document.

Learned counsel for the respondent, on the other hand, supported the impugned judgment.

I have considered the submissions, and have gone through the record. To start with, it may be observed, that execution of the document Ex.-1 is not in dispute. It is also not in dispute, that 2500 sq. yards portion ends at a point where the three rooms end. It is also not in dispute, that if half portion of the gate is treated to be included in the property conveyed, it would exceed 2500 sq. yards. In this background the substantial question of law, as framed, is required to be answered. Since the above things are not in dispute, the document is required to be construed, to arrive at a correct finding about entitlement of the plaintiff to get the decree, as granted by the learned lower Appellate court.

The plaintiff's case is plain and simple, that property was sold vide Ex.-1, and the property sold included half portion of the gate. It is also case of the

plaintiff, that along with the sale deed, a site plan was also prepared, and got registered, wherein the property sold is marked by yellow colour, and that yellow colour extends upto half portion of the gate. The precise averment is in para-2, being "...श्री गोकल चन्द मजकूर ने यह दर्ज कराया कि मकान मजकूरेबाला में से बैजानिब दिखनाद जो नकशे में बरंग पीला से दिखलाई गई है जिस में निरूफ दरवाजा व तीन कोठरी पुख्ता तामीर शुदा है को बिलऐवज 8000) अखरे रूपया आठ हजार में मुदईया को बै व फरोख्त कतई को है". The case of the defendant in the written statement, in this para is, "...और जो नक्शा पेश किया गया है वह बाद का बनाया हुआ है और फर्जी है". With this, it is pleaded, that the recital about the description is an act of carelessness and accidental mistake. Since execution of the sale deed Ex.-1 is not in dispute, and since in Ex.-1, it is clearly mentioned, at page-1 itself, that the property sold is shown in the site plan by yellow colour, the sale deed has to be taken to be the document, including the site plan. This site plan has been produced by the plaintiff as Ex.-2. The learned trial court has considered, that in the site plan, there are two lines in the North side of the property; one being A to B, and other being C to D, and according to learned trial court, the line A to B has been erased or over-coloured, and thus the document Ex.-2 is interpolated. As against this, the learned lower Appellate Court has considered, that the original of this map was summoned from the Sub Registrar Office, and has been produced on record as Ex.-2A, and the same has been proved by P.W.4 Naimuddin, wherein there are no two lines, and the property described therein by blue colour, is the

property sold, which include half portion of the gate. This, coupled with the other evidence available on record, including that of the scribe P.W.3 Ratanlal, attesting witness of the sale deed being P.W.10 Mangal Chand, and has also considered the entire evidence of the defendant as well, and it has been found, that the sale deed includes half portion of the gate.

I have gone through the entire evidence, so also document Ex.-1, the site plan Ex.-2, annexed with the sale deed, copy of site plan produced as Ex.-2A, and has also considered principle propounded in various judgments of this Court, including that propounded by this Court in S.B. Civil First Appeal No.160/74 (State Vs. Jorawar Mal) decided 1.7.1986, and am of the view, that the general principle propounded is, that in cases where there is discrepancy between measurements of the property conveyed, and the boundaries, and the description conveyed, then the later is to prevail, and not the former. This is one aspect of the matter. Even leaving apart this principle, even if the document is construed independently also, in the present case the defendants' clear case in the written statement is, that at the time of selling the property, it was not got measured. The obvious consequence is, that the recital about the measurement of the property cannot be said to be carrying any accuracy. Then, nobody has deposed on the side of the defendant, about there being any interpolation in Ex.-2, as has been found by the learned

trial court, and nobody has deposed on the side of the defendant, that the property purported to be conveyed, as appearing in Ex.-2, or in Ex.-2A, was not the property conveyed, by giving out, as to what lesser portion of the property was conveyed in Ex.-2 and/or in Ex.-2A, and as to how Ex.-2A, or Ex.-2, for that matter, is incorrect, or unreliable. This coupled with the fact, that there appears to be no evidence led on the side of the defendant, to show, that the description of the property, to be including half portion of the gate, was erroneously made. To be more sure I called upon the learned counsel for the appellant to point out if there be any evidence on record on his side, to show, that the description of the property given in the sale deed, being, to be including half portion of the gate, was accidental error, or was erroneously made, but the learned counsel could not point out any such evidence, even comprising of bare ipse-dixit. In this background, the learned lower Appellate Court, by appreciating the evidence of the parties, has placed greater reliance on the testimony of P.W.3, who is the scribe of the document, and has deposed, that the property sold included half portion of the gate, which is pure finding of fact. Then in view of the above, if the document Ex.-1 is required to be construed, as contemplated by substantial question framed, it will have to be construed as a complete document, which obviously includes Ex.-2, and if it is so construed, collectively reading Ex.-1 and Ex.-2, obviously including Ex.-2A, as proved by P.W.4, and there being no rebuttal, or

controversion, on the side of the defendant, the obvious conclusion is, that the property conveyed does include half portion of the gate, as shown in Ex.-2 and Ex.-2A, and at the same time, the mention of 2500 sq. yards of the land, is of no adverse consequence against the plaintiff, as even according to the defendant, the measurements were not taken at that time.

Then, it was sought to be argued, that the defendant had 5000 sq. yards of land, and half of that was sold, being 2500 sq. yards. Suffice it to observe, that a bare look at Ex.-1 shows, that there is no such recital, about which half portion of the property belonging to the defendant having been sold, rather the recital is, that out of 5000 sq. yards belonging to the seller, under the sale deed dt. 28.12.52, having boundary on the three sides by permanent wall, southern portion, as shown in the annexed site plan by yellow colour, has been sold, and that was described to be measuring 2500 sq. yards, which include half portion of the gate, with three permanent Kothris. Thus, the sale deed clearly conveys the southern portion of the property of the seller, starting from half portion of the gate, and as described in the site plan annexed with the sale deed, wherein the property has been shown by yellow colour.

Thus, even leaving apart the appreciation of evidence, made by the learned lower Appellate Court, even

if the sale deed Ex.-1 is construed afresh, as required by substantial question of law framed, I am of the view, that the sale deed has been rightly construed by the learned lower Appellate Court. Therefore, the question is required to be, and is, answered against the appellant.

The net result is, that the appeal has no force, and is hereby dismissed. Parties shall bear their own costs of this appeal.

(N P GUPTA),J.

/Sushil/